

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF WISCONSIN**

KENNETH WOJKIEWICZ,
1449 Harvey Street
Green Bay, WI 54302

Case No: 19-CV-913

Plaintiff,

AMERICAN FAMILY MUTUAL INS. CO,
6000 American Parkway
Madison, WI 53783-0001

BLUE CROSS BLUE SHIELD OF WISCONSIN
N17 W24340 Riverwood
Waukesha, WI 53188

UMR, INC.
11 Scott Street
Wausau, WI 54403-4808

Involuntary Plaintiffs,

v.

UNITED STATES POSTAL SERVICE
470 L'Enfant Plaza SW, Ste 604
Washington, D.C 20024

BARBARA LYNNE CHARLES
5566 Abts Road
New Franken, Brown County, WI 54229

Defendants.

COMPLAINT

The Plaintiff, Kenneth Wojkiewicz, by and through his attorneys Terence J. Bouressa of Menn Law Firm, Ltd, and for his cause of action against the defendants United States Postal

Services and Barbara Lynne Charles, hereby alleges as follows:

JURISDICTION

1. That Subject Matter Jurisdiction is proper pursuant to 28 U.S.C. § 1346(b)(1) because it is alleged plaintiff suffered personal injury and damages as the result of the negligent acts and omissions of an employee of the United States Government.

2. That Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the accident occurred in this judicial district.

PARTIES

3. That the Plaintiff, Kenneth Wojkiewicz, is an adult resident of the City of Green Bay, County of Brown, State of Wisconsin, currently residing at 1449 Harvey Street.

4. That the Involuntary Plaintiff, American Family Mutual Insurance Company, is an insurance company that may have paid medical expenses on behalf of the plaintiff Kenneth Wojkiewicz and may claim a right to reimbursement or subrogation in this action. American Family Mutual Insurance Company does business from its offices located at 6000 American Parkway, Madison, WI 53783-0001. That the agent for service of process for American Family Mutual Insurance Company is Corporate Service Company located at 8040 Excelsior Drive #400, Madison, WI 53717. The plaintiff denies American Family Mutual Insurance Company's entitlement to subrogation or reimbursement in this action.

5. That the Involuntary Plaintiff, Blue Cross Shield of Wisconsin, is an insurance company that may have paid medical expenses on behalf of the plaintiff Kenneth Wojkiewicz and may claim a right to reimbursement or subrogation in this action. Blue Cross Blue Shield of Wisconsin does business from its offices located at N17 W24340 Riverwood, Waukesha, WI 53118. That the agent for service of process for Blue Cross Blue Shield of Wisconsin is

Corporate Service Company located at 8040 Excelsior Drive #400, Madison, WI 53717. The plaintiff denies Blue Cross Blue Shield of Wisconsin's entitlement to subrogation or reimbursement in this action.

6. That the Involuntary Plaintiff, UMR, Inc., is an insurance company that may have paid medical expenses on behalf of the plaintiff Kenneth Wojkiewicz and may claim a right to reimbursement or subrogation in this action. UMR, Inc., does business from its offices located at 11 Scott Street, Wausau, WI, 54403-4808. That the agent for service of process for UMR, Inc., is Corporate Service Company located at 8040 Excelsior Drive #400, Madison, WI 53717. The plaintiff denies UMR, Inc.'s entitlement to subrogation or reimbursement in this action.

7. That the Defendant, United States Postal Service, is a federal governmental agency organized and existing under the laws of the United States. That Megan J. Brennen is the Postmaster General for the United States Post Office authorized to accept service of process on behalf of the United States Post Office including accepting service of this complaint and is located at 475 L'Enfant Plaza SW, Washington, D.C., 20260. That at all times herein mentioned, the Defendant, United States Postal Service, employed the Defendant, Barbara Lynne Charles. That the Defendant, United States Postal Service, has been timely and properly served with a properly executed Federal Tort Claims Act—Form SF 95 "Claim for Damage, Injury, or Death".

8. That the Defendant, Barbara Lynne Charles, was at the time of the accident, an adult resident of the New Franken, County of Brown, Wisconsin, residing at 5566 Abts Road, 54229. That at all times herein mentioned the Defendant, Barbara Lynne Charles was acting within the course and scope of her employment with the Defendant, United States Postal Service.

FIRST CAUSE OF ACTION—NEGLIGENCE

9. Plaintiff incorporates by reference Paragraphs 1 through 8 inclusive, as though fully set forth herein.

10. That on or about April 21, 2017, at or about 5:37 p.m. the Plaintiff, Kenneth Wojkiewicz, was driving his vehicle westbound on University Avenue at or near its intersection with Elizabeth Street in the City of Green Bay, Brown County, Wisconsin.

11. That at that same time and place, the Defendant, Barbara Lynne Charles, was operating a United States Postal Service truck traveling eastbound on University Avenue at or near its intersection with Elizabeth Street when she failed to yield the right of way for the plaintiff's vehicle, turning left in front of him causing the collision and consequent injuries to the plaintiff. Amongst other things, the Defendant, Barbara Lynne Charles failed to keep an adequate lookout, failed to maintain control of her vehicle, failed to operate her vehicle in a safe and prudent manner and in other respects according to proof.

12. That the Defendant's negligence was a proximate cause and cause in fact of the injuries suffered by the plaintiff as alleged herein and according to proof.

13. That as a result of the forgoing acts of negligence on the part of the Defendant, Barbara Lynne Charles, the plaintiff sustained personal injuries and associated emotional distress and has been and will be required to pursue medical care and treatment, together with the expenses associated therewith, all to his damage in a sum according to proof. That the injuries suffered by the plaintiff together with pain, suffering, disability and associated medical expenses are permanent conditions which will cause both past and future damages to the plaintiff in a sum according to proof.

14. That as further direct and proximate result of the negligence of the Defendant, Barbara Lynne Charles, the plaintiff, Kenneth Wojkiewicz has suffered and will suffer a loss of earnings and earning capacity all in a sum according to proof.

SECOND CAUSE OF ACTION—*RESPONDEAT SUPERIOR*

15. Plaintiff incorporates by reference Paragraphs 1 through 14 inclusive, as though fully set forth herein.

16. That at the time of the accident, the Defendant, Barbara Lynne Charles, was employed by the Defendant, United States Postal Service, and at all times herein mentioned was acting in the course and scope of that employment.

17. That the Defendant, United States Postal Service, is a named Defendant herein pursuant to the theory of *Respondeat Superior*, in that it is liable for the Plaintiff's injuries and damages caused by the negligent acts of its employee, agent, servant, and specifically herein, Barbara Lynne Charles, while acting in the course and scope of her employment.

WHEREFORE, the plaintiffs pray for judgment against the defendant and each of them as follows:

1. For past and future medical expenses in a sum according to proof;
2. For past and future loss of earnings and earning capacity in a sum according to proof;
3. For pain, suffering and disability in a sum according to proof
4. For the cost of suit incurred herein including reasonable attorney's fees; and
6. For such others and further relief as the court deemed just and proper.

DEMAND FOR JURY

Plaintiff respectfully request that this matter be tried to a jury.

Dated this 20th day of June, 2019.

MENN LAW FIRM, LTD.
Attorneys for the Plaintiff,

By: /s/ Terence J. Bouressa
Terence J. Bouressa
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